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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Implementation of Section 26 of the  
Cable Television Consumer Protection  
and Competition Act of 1992

Inquiry into Sports Programming  
Migration

PP Docket No. 93-21

REPLY COMMENTS OF CBS INC.

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April 25, 1994

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## SUMMARY

The CBS college football contracts cited in the Commission's Further Notice either permit, without restriction, the broadcast of home market games not being televised on a national basis, or do so subject to certain entirely reasonable and necessary time restrictions. Moreover, the provisions in those contracts allowing CBS to select some games for broadcast on twelve days notice (or, in limited circumstances, on six days notice) have significant public benefits in that they allow the games of the greatest interest to be telecast to regional and national television audiences. These twelve- and six-day provisions do not have the practical effect of restricting local broadcasters from presenting local games.

The marketplace for both the buyers and sellers of college sports rights is a highly competitive one. The standard exclusivity arrangements that have evolved from years of free negotiations between buyers and sellers may be presumed to embody the greatest possible efficiencies in the distribution of college sports to mass broadcast audiences. Any regulatory diminution of those efficiencies will come at the expense of the educational institutions that rely on an efficient marketplace to maximize the value of their sports rights. It will also come at the expense of viewers of free, over-the-air

television, who depend on the competitive ability of broadcasters to exploit in the most efficient way possible the value of sports rights that may otherwise be captured by subscriber-supported cable networks.

There is no significant evidence, however, that any broadcast agreement for any college sport has inappropriately limited the college sports available to the public on television. Given the benefits of negotiated exclusivity provisions to programmers and college conferences, the Congress and Commission should be hesitant to restrict that freedom, particularly in the absence of any evidence that the marketplace is not functioning adequately to ensure viewers reasonable access to televised college sports.

Restrictions on exclusivity arrangements would serve only unnecessarily to limit the incentives of college sports conferences and broadcast networks in bringing televised sports to the public. Accordingly, no further regulation should be undertaken in this area.

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REPLY COMMENTS OF CBS INC.

CBS Inc. ("CBS") respectfully submits these reply comments for consideration by the Federal Communications Commission (the "Commission" or "FCC") in response to a Further Notice of Inquiry released March 11, 1994 (the "Further Notice").

INTRODUCTION

In its Further Notice, the Commission, among other things, seeks further information about recent network television contractual arrangements with college football conferences, specifically noting CBS's arrangements with the Southeastern Athletic Conference ("SEC") and the Big

East Football Conference ("BEFC").<sup>1/</sup> The Further Notice is especially interested in provisions in such college sports agreements that grant networks exclusive rights to choose and broadcast games within certain time periods.

As we will show, the CBS college football contracts cited in the Further Notice either permit, without restriction, the broadcast of home market games not being televised on a national basis, or do so subject to certain entirely reasonable and necessary time restrictions.

We will also show that the provisions in those contracts allowing CBS to select some games for broadcast on twelve days notice (or, in limited circumstances, on six days notice) cannot be considered unreasonable. These provisions have significant public benefits in that they allow the games of the greatest interest to be telecast to regional and national television audiences. And contrary to the claims of some independent stations, these twelve- and six-day provisions do not have the practical effect of restricting local broadcasters from presenting local games.

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<sup>1/</sup> Although CBS has not yet executed formal contracts with the SEC and the BEFC, we shall nevertheless discuss the terms of these agreements as they presently stand. The relevant provisions may be subject to further refinement as they are reduced to formal contracts.

CBS urges that, in the absence of any persuasive showing of public harm, the negotiation of exclusivity provisions in college sports agreements should be left to the marketplace. For both the buyers and sellers of college sports rights, that marketplace is a highly competitive one. The standard exclusivity arrangements that have evolved from years of free negotiations between buyers and sellers may be presumed to embody the greatest possible efficiencies in the distribution of college sports to mass broadcast audiences. Any regulatory diminution of those efficiencies will come at the expense of the educational institutions that rely on an efficient marketplace to maximize the value of their sports rights; it will also come at the expense of viewers of free, over-the-air television, who depend on the competitive ability of broadcasters to exploit in the most efficient way possible the value of sports rights that may otherwise be captured by subscriber-supported cable networks.

There is abundant evidence that the market for college sports broadcast rights is working well. Given the benefits of exclusivity provisions to both program providers and college conferences -- and the dearth of evidence that the marketplace is not functioning adequately to provide the public with a full range of viewing choices -- we respectfully submit that no action

by the Commission or the Congress is indicated in this area.

## II.

### EXISTING COLLEGE FOOTBALL AGREEMENTS INCLUDE OPPORTUNITIES FOR LOCAL HOME TEAM BROADCASTS.

While the exclusivity provisions of college sports broadcast agreements generally adhere to certain established patterns, they nonetheless vary to some degree from agreement to agreement within a given sport, and vary still more from one sport to another. There is no significant evidence, however, that any broadcast agreement for any college sport has inappropriately limited the college sports available to the public on television.<sup>2/</sup>

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<sup>2/</sup> The Cable Television Consumer Protection and Competition Act of 1992 defines "preclusive contract" to include "any contract that prohibits:

- (A) the live broadcast by a local television station of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or
- (B) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station."

Pub. L. No. 102-385, §26, 106 Stat. 1460.



Since the Commission has requested information about our SEC and BEFC agreements, we will focus on these agreements in the discussion that follows. In particular we will examine those two aspects of the agreements that bear directly on the question of preclusivity -- the right of conference-member schools to authorize local broadcasts of their home games, and the notification period required of the network in selecting a game for regional or national broadcast.

#### Local broadcasts of conference games

CBS's agreements with the SEC<sup>3/</sup> and with the BEFC<sup>4/</sup> each will grant CBS the exclusive right to broadcast on a network basis certain football games during the five consecutive seasons beginning in 1996.<sup>5/</sup> Both of these

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3/ The twelve teams comprising the SEC are University of Alabama, University of Arkansas, Auburn University, University of Florida, University of Georgia, University of Kentucky, Louisiana State University, University of Mississippi, Mississippi State University, University of South Carolina, University of Tennessee and Vanderbilt University.

4/ The eight teams of the BEFC are Boston College, University of Miami, Rutgers University, Syracuse University, Temple University, University of Pittsburgh, Virginia Tech, and West Virginia University.

5/ Football games subject to both the SEC agreement and the BEFC agreement include: (i) all conference games, regardless of their site, (ii) all non-conference games (Footnote continued to next page)

agreements preserve wide opportunities for local broadcasters to carry those home market games not broadcast regionally or nationally by CBS and, indeed, will provide a significant opportunity for televising non-selected games even outside their home markets.

During each season CBS has agreed to broadcast twelve SEC games and between nine and twelve BEFC games.<sup>6/</sup> At present CBS intends to broadcast the majority of SEC games and BEFC games on a regional basis on Saturdays between 3:00 p.m.<sup>7/</sup> and 7:00 p.m.<sup>8/</sup>

The broadcast rights for all games not selected by CBS -- i.e., approximately 120 SEC games and from 76 to 79 BEFC games each season -- will remain with the respective conferences. The SEC may permit the unrestricted broadcast of any non-network game within its home

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(Footnote continued from previous page)

<sup>5/</sup> played at a conference member's home site, and (iii) those non-conference games played at a neutral site if the conference controls the broadcast rights.

<sup>6/</sup> Of those games broadcast by CBS, no more than three SEC games and no more than five BEFC games may be non-conference games -- i.e., games of conference member teams with non-conference member teams.

<sup>7/</sup> All time references in this document are to Eastern Current Time.

<sup>8/</sup> Although most of CBS's broadcasts will be regional, our agreements with the SEC and the BEFC will require CBS to make at least two national broadcasts per season.

market.<sup>9/</sup> In addition, it may provide for non-network games to be carried by pay-per-view telecast within the home states of the playing teams and by point-to-point closed circuit telecast for university and alumni viewing purposes. All of the foregoing transmissions, including home market broadcasts, may air at any time, even opposite an SEC game being broadcast by CBS.

Non-network SEC games may be telecast to a regional audience by any broadcaster (other than a national television network such as ABC, NBC or Fox) or cablecaster so long as the game's kickoff time is before 12:40 p.m. (with respect to broadcasts and cablecasts) or after 6:10 p.m. (with respect to cablecasts only). Otherwise the game may be televised on a tape-delayed basis after 11:00 p.m. on the day the game is played.

As with the CBS-SEC agreement, CBS's agreement with the BEFC recognizes a local community's interest in receiving televised coverage of a home team's games. Accordingly, the agreement authorizes broadcasts of those home market games which CBS does not select for coverage. However, if a local broadcaster wishes to make a live broadcast of

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<sup>9/</sup> "Home market broadcasts" within the meaning of CBS's SEC and BEFC agreements refer to broadcasts to television markets located no more than 75 miles from the home television market of a particular team.

such a game on a Saturday when CBS is scheduled to broadcast another BEFC game, the agreement requires that the non-network game's kickoff time be scheduled for either before 12:10 p.m. or after 6:10 p.m.

Without undue burden, local broadcasters and their local BEFC teams should be able to schedule non-network games for live telecast. If for any reason such scheduling proves impractical, our BEFC agreement will permit the game to be carried on a tape-delayed basis. Consequently, time period exclusivity should not operate significantly to impede a local broadcaster's ability to cover home market games.

Moreover, as in the case of CBS's SEC agreement, the CBS-BEFC agreement will permit the syndicated telecast of non-network Saturday games on a regional basis so long as the game begins before 12:10 p.m. or after 6:10 p.m. The agreement will also permit the regional syndication of non-network games on a tape-delayed basis for airing after 11:00 p.m.<sup>10/</sup>

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<sup>10/</sup> Under the Agreement, the BEFC may also authorize national cablecasts of 12 games not selected for broadcast by CBS. These broadcasts are subject to CBS's time period exclusivity. Like the games selected by CBS, none of these 12 cable games may be picked up for regional syndication.

Thus the CBS-SEC contract places no restrictions on the home market broadcast of non-network games. While the BEFC agreement does place some time constraints on the broadcast of home market games, their telecast is neither precluded, nor made unduly difficult. It would seem to be a minor matter, for example, for a school wishing to arrange for the local telecast of its games to schedule its kickoffs to begin at noon.<sup>11/</sup>

Similarly, ABC's agreements with the College Football Association (CFA), the Pacific 10 Conference/Big Ten Conference (PAC 10/Big 10), the Atlantic Coast Conference (ACC) and the Big Eight Conference do not preclude home market broadcast of those conference games not selected for network broadcast.<sup>12/</sup> Thus, it would seem quite

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<sup>11/</sup> As discussed below, scheduling of kickoff times to permit the home market broadcasts of non-network games will be facilitated by the fact that CBS is obligated to announce all September games selected for coverage no later than January 1 -- i.e., nine months before the season begins.

<sup>12/</sup> ABC's college football agreements include its existing contracts with the CFA and the PAC 10/Big 10 and its new agreements in principle with the ACC and the Big Eight. Under these arrangements, ABC has been granted limited exclusivity rights to select and televise conference home games which typically begin in the late afternoon and generally cover a 3 1/2 hour time period. With respect to games not selected for broadcast by ABC, the conferences may not authorize game telecasts by any other network. Otherwise, the agreements provide that conference schools may authorize the telecast of home market games either at any time or outside of certain specified time periods. All other non-selected games may (Footnote continued to next page)

evident that the agreements that have resulted from free negotiations between broadcast networks and college football conferences have routinely recognized, and sought to accommodate, the interest of home market fans in receiving televised coverage of non-network games.

Advanced selection of conference games for network coverage

A concern regarding network acquisition of college sports rights raised in particular by the INTV<sup>13/</sup> is that flexibility granted to the networks in selecting college conference games may have the practical effect of precluding local broadcasters from making the necessary arrangements to cover non-selected games. In fact, however, CBS's agreements with both the SEC and the BEFC will significantly limit the network's freedom to select conference games on short notice; and even where the shortest permissible notice is exercised by the network, home market broadcasts should not be precluded.

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(Footnote continued from previous page)

<sup>12/</sup>also be televised subject to these time restrictions. See Comments by Capital Cities/ABC, dated April 11, 1994, at 3-6, to the Commission's Further Notice.

<sup>13/</sup> See Comments of Association of Independent Television Stations ("INTV") to the Commission's initial Notice of Inquiry released February 9, 1993 (the "Initial Notice") at 13.

Normally, CBS is presented with a football schedule prior to a season's commencement. CBS intends to choose SEC games scheduled for September by June 1. BEFC games played in September must be selected by CBS by January 1 -- nine months before the season begins.<sup>14/</sup>

For the rest of the season, however, CBS will have a degree of flexibility in the selection of games. In order to support regional or nationwide coverage of college sports, a network must be able to offer its audiences the matchups that prove to be of greatest interest as the season progresses. Our agreements (like those of other broadcasters) seek to balance this crucial network interest against the conferences' interest in receiving sufficient advance notice of network games to permit local broadcast of non-network games.

This balance has been achieved by providing that all but two or three of the season's games must be selected by CBS at least twelve days before they are broadcast. For two games during each season (and, if the conference gives its

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<sup>14/</sup> In addition, under both the SEC and BEFC agreements, CBS may choose one game for broadcast during prime time (i.e., 8:00 p.m. - 11:00 p.m.) and one game for Thanksgiving Day coverage. CBS must pick its prime time and Thanksgiving Day games by June 1 with respect to SEC games, and by January 1, with respect to BEFC games.

specific approval, for a third game as well), CBS may make its selection on six days' notice.

There has been no showing as to why these time frames ought not be enough to allow home market broadcasters to arrange for local coverage of non-network games. Broadcasters are in the business of covering news and events of public importance on a moment's notice. CBS's football agreements provide much more time than that for local broadcasters to develop and market a game. INTV's assertion that it is "absolutely impossible to develop and market a game" in under ten days<sup>15/</sup> runs entirely contrary to our own experience as broadcasters and does not seem plausible.

But even allowing for argument's sake that some local broadcasters might experience some difficulty, or at least some inconvenience, in preparing for a home market broadcast on six days' notice, there is no reason that any such last minute preparations should ever be necessary. Broadcast rights to a home team's game can easily be purchased and planned for well in advance, with only a small possibility of subsequent network selection of that game -- a contingency that can easily be provided for by

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<sup>15/</sup> See INTV's Comments to the Commission's Initial Notice at 13.



contractual provision. Indeed, because postseason play in professional sports like baseball and basketball involves a series of games of indeterminate number, it is quite ordinary for broadcasters to contract on a contingent basis for the coverage of games, and for the sale of commercial time in games, that may or may not be played.

While the twelve- and six-day notice provisions do not materially interfere with home market broadcasts, they are extremely important to broadcast networks, allowing them to realize fully their investment in college sports rights. Moreover, the twelve- and six-day provisions have the direct effect of providing regional and national audiences with coverage of the very games that have generated the greatest public interest.

In sum, existing college football contracts pose no insuperable obstacles to telecast of local home team games. Indeed, CBS's contracts even allow the broadcast of many conference games not selected by the network in addition to home team games. There is nothing to indicate a need for legislation in this area, and the Commission should so indicate to Congress.

### III.

THE NEGOTIATION OF EXCLUSIVITY PROVISIONS SHOULD BE LEFT TO THE MARKETPLACE.

College football broadcast rights are currently negotiated in a highly competitive marketplace -- one that is getting more competitive all the time. If Paramount and Time Warner succeed in creating new broadcast television networks,<sup>16/</sup> there will soon be a total of six broadcast networks fiercely contending for college sports programming. Given Fox's dramatic entry into professional football coverage, there is little reason to doubt that such broadcast networks will prove to be significant competitors to the three traditional broadcast networks in bidding for sports rights. Moreover, broadcast networks must vie for college sports programming not only with each other, but with national cable networks such as ESPN, USA and TNT, regional sports cable services, pay-per-view services, independent television broadcasters and syndication packagers.

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<sup>16/</sup> See "And then there were six? Networks are back in style as studios try to insure their products' future," The New York Times, November 1, 1993, at D7; "Warner Bros. Enters Race for Network," The New York Times, November 3, 1993, at D1.

The collegiate conferences also operate in an increasingly competitive marketplace. They must compete with numerous other conferences for lucrative television contracts.<sup>17/</sup> In addition, each conference must strive to keep its individual member teams satisfied. The SEC's and the BEFC's recent breakaway from the CFA,<sup>18/</sup> as well as Notre Dame's secession from the CFA four years ago,<sup>19/</sup> demonstrate that teams will not hesitate to seek their own broadcast arrangements when they believe they can negotiate better television deals on their own.

Given the competitive climate in which the provisions of college football agreements are negotiated, it seems clear that time period exclusivity historically has found, and continues to find, its way into contracts<sup>20/</sup> precisely

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17/ The conferences (and team) with college football television agreements covering current and/or future seasons include: The SEC, the BEFC, the PAC 10, the Big Ten, the Southwest, the Big Eight (which, commencing with the 1996 football season, will include four additional teams from the Southwest Conference), the ACC, the CFA and Notre Dame.

18/ See "CBS: SEC, Big East Pacts More Than Move To Fill Space," The Chicago Tribune, February 16, 1994, at, 4.

19/ See "Now Notre Dame's Golden Season; Fighting Irish Football Returns Pumped Up by Breakaway TV Contract," The Washington Post, September 5, 1991, at B1.

20/ See Comments of Capital Cities/ABC, Inc. dated March 29, 1993, at 10-12, to the Commission's Initial Notice.

because it is extremely valuable to the contracting parties.

For the schools, these provisions advance a primary purpose of college conferences -- obtaining broad exposure for each of its teams.<sup>21/</sup> Schools seek this exposure in order to promote alumni contributions and increase the size and diversity of the applicant pool for admission.<sup>22/</sup>

Most importantly, the enhanced value which exclusivity confers on sports rights assures that conference members will receive substantial rights fees to support their educational, research and athletic programs. Any regulatory intervention that curtailed exclusivity arrangements would constitute a transfer of wealth away from these educational programs toward non-network distributors of sports programming.

For broadcast networks, the ability to negotiate exclusivity provisions greatly enhances the value of sports rights. By allowing a network to select the most

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<sup>21/</sup> See Comments of the NCAA dated March 29, 1993, at 4-5, to the FCC's Initial Notice.

<sup>22/</sup> CBS's agreements with the SEC and the BEFC foster team exposure by requiring that CBS make at least one broadcast of each team during the term of the agreement. Moreover, CBS must broadcast at least seven different SEC and five different BEFC team appearances each season.

interesting games and, by virtue of time period exclusivity, attract the largest possible audiences for those games, existing contractual arrangements permit a broadcast network to bid effectively against cable networks for collegiate sports rights. This assures the widest possible dissemination of college games to the public, including those members of the public who do not -- or cannot -- subscribe to cable. Any regulatory limitations on the right to negotiate exclusivity arrangements will substantially diminish the chances that college sports will remain on free over-the-air television.

Given the benefits of negotiated exclusivity provisions to programmers and college conferences, the Congress and Commission should be hesitant to restrict that freedom, particularly in the absence of any evidence that the marketplace is not functioning adequately to ensure viewers reasonable access to televised college sports.

The marketplace is, indeed, functioning adequately in this area. The extent of time period exclusivity granted in network-conference agreements has generally been narrowly tailored to meet the specific demands of each sport. As demonstrated above, college football rights agreements contracts allow for considerable flexibility in the presentation of home market games and other non-network games. On the other hand, because basketball games are

played more frequently and are scheduled throughout the week, it is generally not problematic for schools to schedule their game so as not to conflict with network conference broadcasts; accordingly, basketball contracts between broadcast networks and college conferences have tended to include stricter exclusivity provisions.

In other words, market forces appear to be shaping exclusivity provisions, giving these greater scope when they will not seriously constrain teams in reaching local broadcast agreements, and allowing only narrower provisions where, given the nature of the sport, broader provisions might have such a restrictive effect.

Because there is no indication that the market is not functioning adequately, restrictions on exclusivity arrangements would serve only unnecessarily to limit the incentives of college sports conferences and broadcast networks in bringing televised sports to the public. Accordingly, no further regulation should be undertaken in this area.

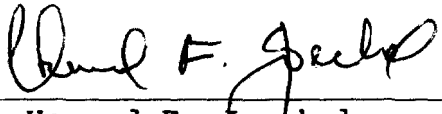
#### CONCLUSION

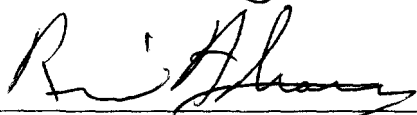
For the foregoing reasons, CBS urges the Commission to advise Congress against the imposition of additional regulatory limits on the ability of collegiate athletic

conferences and broadcast television networks to negotiate  
exclusivity arrangements in sports rights agreements.

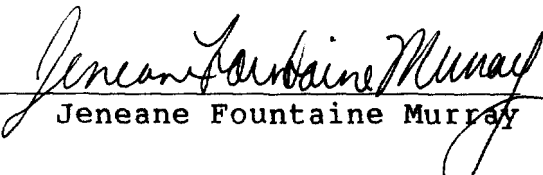
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